

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-004-13-1-5-00265-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel** 45-08-16-430-024.000-004  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 2620 Jefferson Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$4,900 (land \$1,800 and improvements \$3,100).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On February 18, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit A: Notice of Hearing
  - Petitioner Exhibit B: Request for Public Record
  - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street; land comparison approach; property record card (“PRC”) (2015-2019); and tax bill
  - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35<sup>th</sup> Avenue; land comparison approach; and PRC (2015-2019)
  - Petitioner Exhibit E: Cover letter for Kovachevich appraisal for 2517-

Petitioner Exhibit F: 2525 Washington Street; land comparison approach; and PRCs (2015-2019) for each parcel Enlargement of page 17 (land comparison approach comparable sales list from appraisals)

Petitioner Exhibits G-GG: PRCs for the properties listed in the land comparison approach<sup>1,2,3</sup>

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property did not change from 2012 to 2013. Nowacki therefore bears the burden of proof.

### **OBJECTIONS**

7. The Assessor objected to Petitioner Exhibits C, D and E on grounds of admissibility. He also objected to B through GG on relevance. The appraisals are not for the subject property, and Nowacki is not an intended user or authorized to use the appraisals. The Assessor also cites to a Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinion, which states that while a person may have a copy of an appraisal, that person is not an intended user unless he was specifically identified by the appraiser. Nowacki received the appraisals in response to a Freedom of Information request. The ALJ took the objections under advisement. Because the exhibits provide information about other Lake County properties, they have at least minimal relevance to this proceeding. Whether Nowacki is listed as an intended or authorized user for these appraisals is not sufficient reason to exclude them. We therefore overrule the objections and admit Exhibits B-GG. We note that these exhibits do not affect the outcome.

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<sup>1</sup> Exhibit F lists a PRC for 4522 Cedar Avenue in Hammond, but no PRC for that address is found in the exhibits.

<sup>2</sup> Nowacki provided only one set of Exhibits B-GG for all hearings held this date. The ALJ granted Nowacki's request that the exhibits be considered in the other four hearings held on May 18<sup>th</sup>. 52 IAC 2-7-1 provides that evidence must be submitted into the record of proceeding for it to be considered by the Board. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing.

<sup>3</sup> The Assessor submitted no exhibits.

8. The Assessor objected to several comments made by Nowacki. He argued that his statements were hearsay, speculation and unsupported opinions without factual basis. The ALJ took the objections under advisement. Our rules allow hearsay as long as it does not form the sole basis for the decision. The Assessor's objections go primarily to the weight of the evidence, which is solely within the discretion of the Board. We overrule the objections, and note that the comments do not affect the outcome of this case.

### SUMMARY OF CONTENTIONS

9. Nowacki's case:
  - a. The appraisals are for properties in different locations in Gary. The appraiser used the same comparable land sales for all three appraisals. Kovachevich stated in his narrative that a search for recent residential sales in Gary does not produce any significant activity. There is a lack of listings and sales which is emblematic of the lack of demand and market for residential lots in Gary. The appraiser indicates that the market is largely quiescent except for many foreclosures, tax, and sheriff sales. Nowacki compared the appraised values of the three appraised properties with their assessed values. The properties were assessed at 520%, 600%, and 3,400% over their appraised values. *Nowacki testimony; Pet'r Exs. C, D, E.*
  - b. Kovachevich's land comparison approach shows the sales prices of lots in Gary, Hammond, and East Chicago. The properties used in the land comparison approach show the same level of over-assessment as the appraised properties. For example, 1410 E. 43<sup>rd</sup> Street sold for \$100, but was assessed at \$34,300 at the time of the sale. The property on Colfax consisted of two lots and sold for \$500 in 2016. It was assessed for \$7,600. 1225 W. 16<sup>th</sup> Avenue sold for \$100 and was assessed for \$2,900. 520 Pennsylvania was assessed for \$3,800 and sold for \$1. 2401 Ralston was assessed at \$16,700 and sold for \$1,000. 2360 Wheeler sold in 2016 for \$400 and was assessed in 2016 for \$47,700. The Alexander property had an assessed value of \$14,200 in 2015 and sold for \$500 in 2014. *Nowacki testimony; Pet'r Exs. F-GG.*
  - c. The appraisals show the systematic over-assessment of lots in Lake County, and particularly in Calumet Township. They show that the northern county urban areas, which have large black communities, are the victims of this over-assessment. The evidence shows beyond a reasonable doubt that Calumet Township and Lake County have been conspiratorially involved in this over-assessment and did nothing to correct it. They ignored it. The most salient point is that all the properties are assessed at a value many, many times their market value. The township assessor has destroyed the city, and it has been done with the cheerful cooperation of the Lake County Assessor. There are plenty of people making money from the destruction of the city and the destruction of market value. *Nowacki testimony; Pet'r Exs. C-GG.*
  - d. There is no improvement on the subject property now, and there was no improvement

in 2013. The value of this property should be \$900 for land only. *Nowacki testimony*.

10. The Assessor's case:

- a. The testimony that there is no improvement on this property is not true. The chart in the land comparison approach is for vacant lots and the subject parcel is an improved property. The sale dates range from 2014 to 2017, and this is a 2013 appeal. The sales from Hammond, East Chicago, and Whiting are probably not relevant to the subject property in Gary. *James testimony; Metz testimony; Pet'r Exs. C, D, E.*
- b. On Exhibit G, the property record card for 1410 E. 43<sup>rd</sup>, the appraiser listed the sales price at \$100 in 2015. A more relevant sale in 2013 shows a sale of \$36,408. Exhibit M, the property record card for 2360 Wheeler, shows a sale in 2013 for \$28,406. The same is true for the property at 14 Ruth Street. The Assessor requests no change in value for 2013. *James testimony; Pet'r Exs. G, M, Q.*

**ANALYSIS**

11. Nowacki failed to make a case for reducing the 2013 assessment. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.; see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1<sup>st</sup> is the legal assessment date for 2013. Ind. Code § 6-1.1-2-1.5(a).

- c. We resolve the conflicting testimony about whether there is any improvement on this property against Nowacki's claim that there is none. Nowacki contends the 2013 assessment should be \$900 for land only, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki further claims that the appraisals show the three appraised properties are over-assessed; therefore the subject property must also be over-assessed. We interpret and address this argument as a challenge to the uniformity and equality of his assessment. The Tax Court has previously held, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach he or she may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007). Such studies, however, must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that the taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed).
- e. Nowacki contends the subject property is over-assessed based on the comparison of sale prices to assessed values of properties the appraiser used in his land comparison approach. He presented the property record cards for 27 of the sold properties on the land comparison chart. However, Nowacki failed to make any meaningful comparison of the properties to the subject property. He did not address similarities or differences. Further, all of the sales occurred after the March 1, 2013 assessment date. He failed to adjust the sales to the assessment date. Therefore, he provided no probative evidence toward determining the market value-in-use of the property.
- f. To the extent that Nowacki was attempting an assessment comparison approach, a party must show that the properties are comparable to the subject using generally accepted appraisal and assessment principles. Ind. Code § 6-1.1-15-18. Thus, to make his case, Nowacki needed to compare the characteristics of the purportedly comparable properties he identified to the subject property's characteristics, and explain how any relevant differences affected value. Because he failed to do so, his assessment comparison is not probative valuation evidence. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d at 471-472 (Ind. Tax Ct. 2005) (finding that sales data lacked

probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).

- g. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2013 assessment.

ISSUED: May 5, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.